

MEMORANDUM

TO: Mayor and Council
FROM: Bill Gardiner, Assistant City Manager
THROUGH: Scott Somers, City Manager
DATE: March 21, 2017
SUBJECT: Staff Response to Questions Regarding the Calvert Road Term Sheet with the University of Maryland

City staff and counsel have provided the information below in response to questions staff received regarding the proposed lease with the University of Maryland for part of the City's property on Calvert Road. Staff can provide further clarification or address other questions at the Council's direction.

1. Will there be code inspections done? If so, who will perform them?

By law, if the University leases the building, it would be exempt from County and City inspections and permits because it is a unit of the State. However, as part of the lease agreement, the City can require periodic inspections based on the fact that it owns the property. This is a standard part of any lease. Also, the City will want to review the renovations/construction on the property and so will be part of that process.

2. Under what conditions can UMD, Bright Horizons, Faculty and other users file a law suit against the City?

The ability of anyone to file a lawsuit depends on whether they have a cause of action, in other words, a complaint that can be recognized by the courts. With respect to this property and lease, a cause of action would be either in tort or contract. A breach of contract action could be brought by the University if the City did not comply with the terms of the lease. The City could bring the same type of action against the University. The lease will make provision for notice if one party believes that the other party has breached the lease, and will provide an opportunity to cure the breach. Since the City is not providing the daycare, and is not contracting with anyone for this service, it would not be part of a breach of contract suit by clients of Bright Horizons.

The other basis for a lawsuit is in tort. This would apply to anyone who is injured due to the negligent or intentional act of the City, its agents, officials or employees. The University, per the lease, would have the responsibility for the renovations and the ongoing maintenance of the property that is under its control. Tort claims based on the negligence, or the intentional act of an employee or agent, are directed to the entity that has control of the property or the person. Since the City would not have control of Bright Horizons, or the University, or the property, it would be unusual for the City to be found liable for any tort damages. The City will be plowing the parking lot and so could be liable for claims related to that, if it is in some way negligent. In this answer we have responded to the question of who can file a lawsuit, which is of course quite different than who can win one.

In any event, the City will require in the lease that UMD and Bright Horizons hold it harmless from any lawsuits based on acts or omissions by UMD, Bright Horizons or their agents, employees and invitees and name the City as an additional insured.

3. What happens if Bright Horizons pulls out prior to the initial 10 year period?

The University would have the opportunity to replace Bright Horizons with a similar fully occupied daycare facility. The City has the right to review and approve the qualifications of the new company and the proposed program. If not approved, or if the property becomes vacant, this will be a default in the lease, which will end the lease with the space reverting to the City. The University will have the ability to cure this default if it can. The City's access to using the space would not change unless the City agreed to change the terms of use. If early termination is caused by a determination by the County or a court that there has been a violation of site "public use" requirements, the lease ends and property reverts to City at no cost.

4. Why don't we request that UMD pay for Public Services' initial move? Otherwise, we could negotiate to stay in the current building until school, City Hall or other space such as Stone Industrial is completed?

The University is providing space for Public Services at no charge for four years. As part of the negotiations, the City has said it will pay for relocation costs. The negotiating team does not believe the University will agree to pay the city's relocation expenses. The negotiating team believes the tentatively agreed upon terms are the most favorable we are able to negotiate.

5. Who will carry the insurance policies on the land, building, and business for the school?

The City insures all of the property that it owns with the Local Government Insurance Trust. In the lease, UMD and Bright Horizons will be required to also insure the property and all operations and name the City as an additional insured. This will also be true for any construction work done on the property.

6. Who and when will a request be done as to whether the daycare is considered a public purpose and whether it will be permitted by the county?

The University will be responsible for obtaining the opinion from the County on this issue.

7. Why don't we renovate the building ourself and then rent it to UMD assuming such a move would be permitted by the county?

If the Council wishes to have the building used for the daycare purpose, the long-term lease with the University paying all construction costs is less expensive and less risky for the City. The renovation and expansion of the building will cost more than \$4 million. However, if the Council directs staff to pursue an alternative to the current UMD proposal, it will certainly do so.